

**Notice of Allowability**

Application No.

09/943,158

Examiner

Taylor Victor Oh

Applicant(s)

BAILEY ET AL.

Art Unit

1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3/19/2004.
2. ☒ The allowed claim(s) is/are 1-9, 11 and 14-27, renumbered as claims 1-24.
3. ☒ The drawings filed on 30 August 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 2/19/2004
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

Examiner's Amendment and Reasons of Allowance

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with an attorney of record, Sarah O'Rourke on 4/8/2004 .

I. The application has been amended as follows:

In the specification, line 4, paragraph [0013] on page 4:

The term "-- anthocyanins--" before the word " and " has been deleted and replaced with "anthocyanins" .

Claim 28 has been canceled.

II. The following is an examiner's statement of reasons for allowance:

- The rejection of claims 1 ,14, and 24 under 35 USC 112, first paragraph, has been withdrawn due to applicants' convincing argument.

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- The close references for the current invention are Gabetta et al (U.S. 5,200,186), S.O.R.I.(GB 1,235,379) , Levy et al (U.S. 5,780,060), and Langston (U.S. 4,500,556).

Gabetta et al teaches a method of preparing a high concentration of anthocyanosides from the fruits of *Vaccinium myrtillus*, *Ribes nigrum*, *Vitis vinifera*, *Sambucus*, and other plants in the following steps of :

- a. extracting *Vaccinium myrtillus* fruits with 50 % aqueous methanol;
- b. adding sodium bisulfite to the solution;
- c. charging the solution to a non-polar polystyrenic resin;
- d. washing the column with 8 liter of water, thereby eluting anthocyanosides;
- e. concentrating the eluted aqueous solution under vacuum;
- f. acidifying the aqueous solution with 1% hydrochloric acid solution;
- g. extracting the aqueous solution with butanol;
- h. washing the resultant solution with HCl solution; and
- i. precipitating the solid and being dried under vacuum .

Levy et al discloses a dry aqueous-alcoholic blueberry extract which contains anthocyanosides in an amount corresponding to 15 % of anthocyanidines.

Langston teaches a process of anthocyanin colorant from grape pomace in the following procedure:

- a. contacting grape pomace with an aqueous extraction solvent containing  $\text{HSO}_3^-$  ions to extract an anthocyanin-bisulfite ion adduct;
- b. removing the aqueous extractantion solvent and undissolved solids from the grape pomace by filtration;
- c. contacting the aqueous extraction solvent with a non-ionic adsorbent to adsorb the anthocyanin-bisulfite pigment complex;
- d. washing the adsorbent to remove soluble sugar, organic acid and other water soluble non-pigmented material; and
- e. eluting the anthocyanin from the adsorbent with an acidified organic solvent .

Furthermore, S.O.R.I. discloses a process for extracting anthocyanines from certain berries and fruits by using extraction solvents, such as water, methanol, ethanol or butanol or any mixture thereof in the presence of non-polar resins.

The instant invention, however, differs from the prior art in that all the prior art references require the addition of bisulfite ions for their processes unlike the present invention; none of the prior art references have shown the use of the claimed brominated polystyrene resin having a unexpected property which allows for the easy separation of anthocyanins from undesired impurities in comparison to the non-brominated polystyrene resin. In addition, unless all limitations of the claims are met, there is no prior art rejection. See In re Zurko 59 USPQ 2d 1690 (Fed Cir. 1991) and In re Lee, 61 USPQ 1430 (Fed Cir. 1991).

Therefore, the claimed invention would not have been obvious to the person with an ordinary skill in the art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning the communication after allowance such as sending all post-allowance correspondence should be directed to " Box Issue Fee" or faxed directly to PUBS at 703-305-8755. This will expedite the process of these papers.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Wang*  
4/8/04



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